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No. 94-197

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In The
Supreme Court of the United States
October Term, 1994

◆
ELOISE ANDERSON, INDIVIDUALLY AND IN HER
OFFICIAL CAPACITY AS DIRECTOR,
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;
AND RUSSELL S. GOULD, DIRECTOR,
CALIFORNIA DEPARTMENT OF FINANCE,

Petitioners,

v.

DESHAWN GREEN, DEBBY VENTURELLA, AND
DIANA P. BERTOLTI, ON BEHALF OF THEMSELVES
AND ALL OTHERS SIMILARLY SITUATED,

Respondents.

◆
On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit
◆

AMICUS CURIAE BRIEF FOR THE STATES OF
MINNESOTA, FLORIDA, HAWAII, AND
PENNSYLVANIA IN SUPPORT OF PETITIONERS
◆

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QUESTION PRESENTED

May a state limit a new state resident's benefits under its Aid To Families With Dependent Children ("AFDC") Program to the level of benefits received or receivable in the person's state of prior residence for a period of one year, with full benefits to be provided thereafter?

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF THE AMICI STATES	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
LIMITED DURATIONAL RESIDENCY REQUIREMENTS, WHICH MAKE WELFARE BENEFITS A NEUTRAL FACTOR IN THE DECISION OF INDIGENT INDIVIDUALS TO MIGRATE, DO NOT VIOLATE THE RIGHT-TO-TRAVEL OR EQUAL PROTECTION	4
A. The Lower Court's Decision Severely Limits The Ability Of States To Effectively Deal With The Numerous Problems They Face, And To Institute Programs That Are More Generous Or More Innovative Than Those of Neighboring States	5
B. The California Statute Does Not Penalize The Right-To-Travel	11
C. California's Statute Does Not Violate Respondents' Right To Equal Protection	13
CONCLUSION	14

TABLE OF AUTHORITIES

	Page
CASES	
<i>Attorney General of New York v. Soto-Lopez</i> , 476 U.S. 898 (1986)	11
<i>Aumick v. Bane</i> , 161 Misc.2d 271, 612 N.Y.S.2d 766 (1994)	7
<i>Califano v. Torres</i> , 435 U.S. 1 (1978)	14
<i>Dandridge v. Williams</i> , 397 U.S. 471 (1970)	8
<i>Hooper v. Bernalillo County Assessor</i> , 472 U.S. 612 (1985)	13
<i>Jones v. Milwaukee County</i> , 485 N.W.2d 21 (Wis. 1992)	13
<i>Marston v. Lewis</i> , 410 U.S. 679 (1973)	13
<i>Memorial Hospital v. Maricopa County</i> , 415 U.S. 250 (1974)	3, 4, 5, 11
<i>Mitchell v. Steffen</i> , 114 S. Ct. 902 (1994)	2
<i>Mitchell v. Steffen</i> , 487 N.W.2d 896 (Minn. Ct. App. 1992)	6
<i>Mitchell v. Steffen</i> , 504 N.W.2d 198 (Minn. 1993) ...	2, 7, 10
<i>New State Ice Co. v. Liebmann</i> , 285 U.S. 262 (1932) ...	5, 8
<i>Reeves, Inc. v. Stake</i> , 447 U.S. 429 (1980)	5
<i>Saxon v. Department of Social Services</i> , 479 N.W.2d 361 (Mich. Ct. App. 1991)	6
<i>Shapiro v. Thompson</i> , 394 U.S. 618 (1969)	passim
<i>Sosna v. Iowa</i> , 419 U.S. 393 (1975)	13
<i>Sturgis v. Washington</i> , 368 F. Supp 38 (W.D. Wash. 1973), <i>aff'd</i> , 414 U.S. 1057 (1973)	13
<i>Zobel v. Williams</i> , 457 U.S. 55 (1982)	11

TABLE OF AUTHORITIES - Continued

	Page
STATUTES	
Ill. Ann. Stat. ch. 305, § 5/11-30 (Smith-Hurd 1993)	7
N.Y. Soc. Serv. § 158(f) (1992)	7
Wisc. Stat. § 49.19(11m) (Supp. 1992)	7
OTHER AUTHORITIES	
Supreme Court Rule 37.5	2
Iris Lav, et al., Center on Budget and Policy Priorities and Center for the Study of the States, <i>The States and the Poor, Budget Decisions Hurt Low Income People in 1992</i> (1993)	7
Peterson, et al., <i>Welfare Magnets</i> (The Brookings Institute, 1990)	9

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INTEREST OF THE AMICI STATES

The Amici States, like every other state, must deal with an increasing number of difficult problems and limited financial resources. States' attempts to meet the

needs of their citizens are severely restricted by the interpretations lower courts have placed on this Court's right-to-travel decisions. The Amici have a substantial interest in ensuring that this Court does not apply the right-to-travel in a manner which unduly limits states' options to deal with financial crises and meet the needs of their citizens.¹

On August 6, 1993, the Minnesota Supreme Court struck down as a violation of the right-to-travel and equal protection, a Minnesota statute similar to the California statute now before this Court. *Mitchell v. Steffen*, 504 N.W.2d 198 (Minn. 1993). The Minnesota statute provided a reduced level of General Assistance and Work Readiness benefits to individuals who had lived in the state for less than six months. *Id.* The statute was enacted to help eliminate a \$1.2 billion state budget deficit. The reduced benefit was based on benefit levels in the recipient's previous state of residence, subject to a floor of 60 percent of the usual Minnesota benefit. *Id.* In invalidating the statute, the Minnesota Supreme Court stated that it was constrained to follow U.S. Supreme Court precedent and strike down the law. *Id.* at 203. Minnesota sought review by this Court; its petition for certiorari was denied on January 18, 1994. *Mitchell v. Steffen*, 114 S. Ct. 902 (1994).

Efforts by states to address complex social problems with new, innovative approaches must not be hindered by an unnecessarily restrictive view of the right-to-travel.

¹ The Amici States file this brief amicus curiae pursuant to Supreme Court Rule 37.5 which provides for filing such a brief without consent of the parties.

Where, as here, and in Minnesota, the residency requirements do not preclude benefits but only limit the incentive to move to obtain access to the state's resources, the courts should uphold the requirements as reasonable and prudent. The amici request this Court to clarify that such balanced approaches by the states, to neutralize the influence of welfare benefits in the decision to move, do not unduly restrict the right of citizens to migrate freely from state to state.

SUMMARY OF ARGUMENT

Both the Ninth Circuit Court of Appeals and the District Court misinterpreted the principles this Court announced in *Shapiro v. Thompson*, 394 U.S. 618 (1969) and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974). They mistakenly found that the cases prohibited any kind of differential treatment of new residents in the absence of a compelling state interest. The Amici agree with California's position that the decisions of this Court do not justify an absolute ban on durational residency requirements in the public assistance field. Moreover, even if *Shapiro* and its progeny do outlaw durational residency requirements, those cases should be overturned in favor of a more realistic and workable standard which will not tie states' hands and which will allow states the flexibility they need to creatively meet the needs of their residents.

The right-to-travel, as interpreted by lower courts, has significantly hindered states in their attempts to deal with the problems they face. It has led states to eliminate programs or cut benefits they offer to their residents.

Limiting the options among which states can choose discourages innovation and harms individuals who could truly benefit from assistance programs.

Allowing welfare benefits to be a neutral factor in one's decision to move to a new state is constitutionally valid. It neither penalizes an individual for moving to a new state, nor denies benefits to individuals who have moved into the state. It instead guarantees that individuals will receive the same amount of assistance they received in their former state of residence, up to their new state's standard of need. States should be allowed to provide a lower initial benefit to new arrivals in a way which does not discourage movement among the states, instead of being forced to take the Draconian measures of reducing all grants, eliminating programs or foregoing program improvements.

ARGUMENT

LIMITED DURATIONAL RESIDENCY REQUIREMENTS, WHICH MAKE WELFARE BENEFITS A NEUTRAL FACTOR IN THE DECISION OF INDIGENT INDIVIDUALS TO MIGRATE, DO NOT VIOLATE THE RIGHT-TO-TRAVEL OR EQUAL PROTECTION.

California's two-tier benefit statute is valid. It violates neither the right-to-travel nor equal protection. The Ninth Circuit Court of Appeals and District Court erroneously interpreted *Shapiro v. Thompson*, 394 U.S. 618 (1969), and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974), as mandating a complete ban on durational residency requirements in the public assistance field. An

absolute ban on durational residency requirements is neither mandated nor justified based on the principles underlying those cases. Moreover, the need for states to pursue creative solutions to the problem of allocating scarce welfare resources warrants this Court's further guidance on those cases.

California's statute creating a two-tier AFDC benefit structure is significantly different from the statutes invalidated in *Shapiro* and *Memorial Hospital*. California's AFDC payment structure makes welfare benefits a neutral factor in the decision of a family to move to that state; it does not impose a penalty on travel and thus does not impinge the right-to-travel. Because it meets the rational basis test, it does not violate the Equal Protection Clause of the United States Constitution.

A. The Lower Court's Decision Severely Limits The Ability Of States To Effectively Deal With The Numerous Problems They Face, And To Institute Programs That Are More Generous Or More Innovative Than Those of Neighboring States.

One of the unique facets of our nation is the ability of the states to test new ideas, to experiment and discover different ways of solving problems. *Reeves, Inc. v. Stake*, 447 U.S. 429, 441 (1980) (quoting *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)). The ability of states to creatively deal with the myriad of problems they face and find effective solutions to those problems is greatly constrained by the interpretation lower courts have placed on this Court's right-to-travel decisions. As society's problems become more

complex, states find that they are increasingly handicapped by the perception of lower courts that any disparate treatment of new residents is constitutionally impermissible. This interpretation has placed the states in a constitutional straitjacket and made it more difficult for states to deal effectively with the problems of needy individuals living within their borders.

When the Minnesota Legislature enacted the law struck down in *Mitchell*, it faced a \$1.2 billion deficit. State welfare programs had to absorb a \$200 million budget reduction. *Mitchell v. Steffen*, 487 N.W.2d 896, 899 (Minn. Ct. App. 1992). Numerous options were considered by the State as it faced the difficult task of allocating substantially fewer resources among its neediest residents. Among the options considered was the total elimination of some welfare programs, an option other states had already implemented. See, e.g., *Saxon v. Department of Social Services*, 479 N.W.2d 361 (Mich. Ct. App. 1991). Eliminating programs would have treated all Minnesota residents alike, but it could hardly be said to have benefited the poor. To avoid this drastic alternative, Minnesota adopted less Draconian measures which included a multi-level payment structure in its General Assistance and Work Readiness programs.

Minnesota and California were not alone in facing fiscal crises and being forced to make difficult allocations of scarce welfare resources.

In 1992, many states faced a third consecutive year of severe fiscal distress. Thirty-five states that had enacted balanced budgets for 1992 faced deficits in these budgets because revenues lagged behind projections, expenditures were

higher than anticipated, or both. These states, many of which had reduced spending or raised taxes in their initial budgets, made substantial mid-year spending cuts to restore their budgets to balance. In addition, in preparing their budgets for fiscal year 1993, which in most states began in July 1992, the majority of states again faced significant gaps between needed spending and available revenues. Many instituted another round of large program reductions.

Iris Lav, et al., Center on Budget and Policy Priorities and Center for the Study of the States, *The States and the Poor, Budget Decisions Hurt Low Income People in 1992* (1993).

A number of states adopted multi-level benefit laws as a means of addressing welfare caseloads in the wake of tight state budgets. See, e.g., Wisc. Stat. § 49.19(11m) (Supp. 1992), Ill. Ann. Stat. ch. 305, § 5/11-30 (Smith-Hurd 1993); N.Y. Soc. Serv. § 158(f) (1992). Three of these laws, including the California law at issue here, were overturned as violative of the federal constitutional right-to-travel or equal protection. *Mitchell*, 504 N.W.2d 198 (Minn. 1993); *Aumick v. Bane*, 161 Misc.2d 271, 612 N.Y.S.2d 766 (1994). Prohibiting states from providing limited benefits to new arrivals forces states to take the more drastic and punitive measures of eliminating programs entirely or reducing benefits for all. It also encourages states to simply refuse to address problems of poverty, since any effort to improve the lives of current residents may induce others to move into the state, thereby making the costs of such programs prohibitively expensive.

Limiting state options in the area of welfare spending is risky. As Justice Brandeis recognized 62 years ago:

To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.

New State Ice Co., 285 U.S. at 311 (1932) (Brandeis, J. dissenting). As states continue to face limited resources and ever increasing demands, difficult choices must be made. The ability to experiment with various solutions is critical.

A state is not required to provide any type of welfare benefits to its residents. *Dandridge v. Williams*, 397 U.S. 471 (1970). As the costs of welfare programs rise, states must decide whether to continue to provide such programs, cut benefits or limit eligibility. A state which sees its neighboring states eliminate or substantially reduce their welfare programs is placed in a difficult position. It can, like its neighbors, also eliminate or reduce its programs. Should the state decide, however, to maintain its programs and benefit levels, it risks becoming a magnet for needy individuals who can no longer obtain benefits in the neighboring states. As the state's welfare caseload increases, its programs become increasingly more expensive to fund. States should have a means of maintaining

their current programs without becoming welfare magnets for their regions. Rather than taking the more harmful steps of cutting benefits to all or eliminating programs altogether, states should be allowed to provide limited benefits to certain groups for reasonable periods of time. As explained below, residency requirements which are of limited duration, and which limit initial benefits to the amount payable in the last state of residence, do not impede the right-to-travel nor violate equal protection guarantees. The requirements, however, do provide states with an important tool to meet the needs of their citizens and operate within budgetary constraints.

In addition to limiting the states' options for allocating their resources in existing programs, lower court interpretations of the right-to-travel case law inhibit states from creating new programs to aid their residents and deal with today's increasingly complex problems. A state's welfare programs impact migration into the state. Peterson, et al., *Welfare Magnets* (The Brookings Institute, 1990), p. 58. "High welfare benefits provide incentives both for the poor to remain in the state and for the poor in other states to move there." *Id.* at 20. A state wanting to experiment with welfare or health care reform will be discouraged from acting if it must immediately open the program, not only to current residents, but to all individuals desiring the services who move to the state for that purpose. A state wanting to enact universal health care, for instance, may hesitate if it perceives that individuals without health coverage who need care will move to the state to participate in the program. Similarly a state wanting to reform its welfare programs may decide it would

be too costly if individuals from states with less innovative programs would be attracted to the state.

If state experimentations in these areas disappear, any reform efforts could only be undertaken at the national level. Such a result is contrary to our long standing tradition of federalism and state experimentation. It also penalizes states that try to creatively address the problems they face. Requiring states to immediately provide their innovative programs to all newcomers makes cost containment difficult, if not impossible, and amounts to a substantial disincentive for states to provide more than lowest-common-denominator services.

By allowing states to provide a lower level of benefits for a reasonable period of time to new arrivals, states will be more likely to try bold and creative measures to address the problems their residents face. States will be more inclined to expend the resources and effort necessary to develop and implement new programs if they have the flexibility to control the costs of the programs.

As Justice Coyne of the Minnesota Supreme Court stated in her *Mitchell* concurrence, "At a time when most states are struggling to remain solvent, I can see no earthly reason for limiting a state's option to the total discontinuance of general assistance or risking financial ruin." *Mitchell*, 504 N.W.2d at 211 (Coyne, J., concurring specially). This Court should clarify that the right-to-travel and equal protection do not preclude states from providing limited benefit payments to new residents for reasonable periods of time.

B. The California Statute Does Not Penalize The Right-To-Travel.

The freedom to travel, including the right of free interstate migration, is a fundamental right. *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 901-02 (1986). Where a residency requirement is challenged, right-to-travel analysis is "a particular application of equal protection analysis." *Zobel v. Williams*, 457 U.S. 55, 60 n.6 (1982).

The seminal cases concerning residency requirements in public assistance programs are *Shapiro v. Thompson*, 394 U.S. 618 (1969), and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974). In *Shapiro*, the Court struck down several statutory provisions which denied welfare benefits to residents who had not lived in the state for at least one year. The statutes' purpose was to deter persons seeking more generous public assistance benefits from moving into the state, a purpose which this Court found constitutionally impermissible. 394 U.S. at 629. In *Memorial Hospital*, the Court struck down an Arizona statute requiring one year's residency in a county before receiving non-emergency medical care at county expense. The Arizona statute was also designed to discourage an influx of indigents into the county for the sole purpose of obtaining the benefits of the county's new, modern medical facilities. 415 U.S. at 263.

Under *Shapiro* and *Memorial Hospital*, the right-to-travel is implicated when a statute "actually deters such travel, . . . when impeding travel is its primary objective, . . . or when it uses any classification that serves to penalize the exercise of that right." *Soto-Lopez*, 476 U.S. at

903 (citations omitted). The courts below, applying these principles, found that California's statute penalized the right to migrate.

The Ninth Circuit Court of Appeals' and District Court's decisions are erroneous because California's statute clearly does not penalize travel. Instead the law was carefully crafted so that it would not burden the right of needy families to relocate. Any family subject to the statute will receive at least as much assistance as the family was entitled to receive in its last state of residence, up to the maximum available to longer-term California residents. This statutory scheme makes welfare benefits a *neutral* factor in a family's decision to move to another state. The impact of this aspect of the statute is simply to remove the incentive for families to move to California just to receive higher welfare benefits. California's law, unlike the statute invalidated in *Shapiro*, does not impose a system whereby families lose welfare benefits by moving into the state. Nor does it create a situation whereby families are "trapped" in their current state of residence because they would receive less if they moved to California. Families wishing to migrate to California are not deterred by the challenged law. They are not penalized by being denied all assistance or by being given less assistance than they received in their state of last residence. Moreover, the initial benefit payments are of limited duration. After one year, new families receive the same AFDC grant longer-term residents receive.

In deciding whether the California statute infringes the right-to-travel, this Court should focus on whether the law actually dissuades individuals from moving, not whether new residents initially receive a different benefit.

It is only state action which actually deters a family from moving which infringes the right-to-travel. Because California's scheme neither deters migration of needy individuals into its boundaries nor penalizes the right-to-travel, it is constitutional.

C. California's Statute Does Not Violate Respondents' Right To Equal Protection.

The courts below erroneously concluded that California's two-tier benefit structure must meet a compelling state interest in order to be upheld. The courts used an incorrect standard. Because the benefit structure neither infringes nor penalizes the fundamental right-to-travel, strict scrutiny is not required. Instead the benefit structure must be reviewed under the rational basis test. Durational residency requirements have been upheld under that test. *Marston v. Lewis*, 410 U.S. 679 (1973) (voter registration); *Sturgis v. Washington*, 368 F. Supp 38 (W.D. Wash. 1973), *aff'd*, 414 U.S. 1057 (1973) (in-state tuition); *Sosna v. Iowa*, 419 U.S. 393 (1975) (divorce proceedings); *Jones v. Milwaukee County*, 485 N.W.2d 21 (Wis. 1992) (general relief).

A law will comply with the rational basis test if the distinctions the law makes rationally further a legitimate state purpose. *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 618 (1985). California has several legitimate state interests which are advanced by the residency requirement. The requirement makes welfare benefits a neutral factor in a family's decision to move. It removes the incentive for families to move solely in order to obtain higher benefit payments. The law also helped meet

California's fiscal crisis. Saving taxpayer dollars is a legitimate public purpose and can justify deferential treatment within government programs. *Califano v. Torres*, 435 U.S. 1, 15 n.7 (1978). California's law is rationally related to legitimate governmental purposes. It is precisely tailored to reducing the incentive for families to move to California just to receive higher welfare benefits and it is rationally related to the goal of reducing state expenditures to help meet the state's fiscal crisis.

CONCLUSION

The judgment of the court of appeals should be reversed. States can constitutionally enact a benefit structure which, for a reasonable period of time, limits welfare payments to new arrivals to the amount they were entitled to receive in their last state of residence.

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